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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,359	04/12/2006	Bruno Drochon	21.1209	8164

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EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
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1793

NOTIFICATION DATE	DELIVERY MODE
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07/17/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/595,359	Applicant(s) DROCHON ET AL.	
	Examiner Paul Marcantoni	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant's arguments filed 6/10/08 have been fully considered but they are not persuasive.

102/103:

Claims 1-3 and 5-26 are rejected under 35 U.S.C. 102(a,b, and e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Drochon et al. '991, Barlet Gouedard et al. '515 B1, Maroy (US '996 or EP 062147-Y reference on Int'l Srch Rprt), Le-Roy Delage et al. (US '592 B1 or Y reference WO 00/37387 A from Int'l Srch Rprt), Dargaud et al. '288 B1 or '001 B2, GB 2385325 (Simon James), Brannon et al. '305 B1, Chatterji '492 B2, Reddy '206 A1, or Birchall et al. '748.

All of the references above teach adding a flexible or elastic material (e.g including plastic materials) to cement compositions. All references from Schlumberger teach that using a trimodal particle size distribution provides maximum PVF or particle volume fraction packing and improved cement properties. The last cited non-Schlumberger prior art do not teach trimodal particle packing. However, it is the examiner's position that this particle size arrangement would have been an obvious design choice at the time of applicants' invention because it is known to improve overall cement properties including well cements.

Drochon et al. '991 teach trimodal packing of particles and use of plastic materials or polypropylene beads which are flexible particles (see col.3, lines 17-32 and col.3, lines 63-65) in well cement.

Barlet-Gouedard et al. '515 B1 teach using well cements and multimodal particle packing to obtain maximum PVF and teach styrene butadiene latex particles (flexible) thus anticipating applicants claims (see claim 1).

Maroy et al. (US '996 or EP '247) teach well cements and multimodal (or trimodal) particle packing to achieve maximum PVF and also use crushed plastic wastes which are flexible particles (see col.5, lines 20-25 and col.8, lines 17-18).

Le Roy-Delage et al. '592 or WO '387 teach a well cement composition comprising flexible material or rubber such as polyethylene or SBR (col.3, lines 40-45). While these references may not teach trimodal packing and may not anticipate, this is conventional and commonly known in the art as a particle packing scheme which will provide improved cement properties and thus would have been obvious design choice for one of ordinary skill in the art.

Dargaud '288 B1 or '001 B2 both teach adding flexible material to cement compositions like Le-Roy Delage. While these references may not teach trimodal packing and may not anticipate, this is conventional and commonly known in the art as a particle packing scheme which will provide improved cement properties and thus would have been obvious design choice for one of ordinary skill in the art.

James (GB '325) teach trimodal particle packing (p.5 ex 4). James teach using a flexible phenol formaldehyde resin as his flexible particle in well cement. This specific resin particle is functionally equivalent to other known flexible materials such as rubber and polypropylene (p.1, last paragraph) and the use of any one of any of these three

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flexible materials in James would have been an obvious design choice for one of ordinary skill in the art.

Brannon teaches a cement composition which can include a microfine cements (col.8, line 49), teaches adding elastic particles which are flexible materials, and also teach additives such as microspheres and hematite (col.24, lines 20-40) which are the same additives of the applicants' instant invention. Brannon does not appear to teach a trimodal particle packing arrangement. However, this is common and conventional in the art as an obvious design choice for one of ordinary skill in the art because it obtains improved cement properties including for well cement/subterranean applications.

Chatterji et al. '492 B2 teaches a particle packing using fine, medium and coarse particles and thus a trimodal arrangement. He also teaches inelastic polyethylene though this material can still be construed as flexible. It is the same polyethylene as applicants claim for their instant invention which they claim is flexible. Even assuming it is alleged different, applicants own polyethylene "over time" will become brittle as well so these appear no different as the plastic particles added to well cements.

Reddy et al. '206 A1 teach adding flexible particles to well cements. Reddy does not teach a trimodal particle packing. However, it is known, common, and conventional to use this packing arrangement to obtain improved cement properties (see claims).

Birchall et al. '748 teach a trimodal particle size distribution is advantageous for cement properties and further teach adding rubbery particles which are flexible (see col.4, line 65 and col.5, lines 35-68 and col.6).

For references above, even if not anticipated, overlapping ranges of amounts would have been prima facie obvious to one of ordinary skill in the art.

103:

Claims 1-3 and 5-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drochon et al. '991, Barlet Gouedard et al. '515 B1, Maroy (US '996 or EP 062147-Y reference on Int'l Srch Rprt), Le-Roy Delage et al. (US '592 B1 or Y reference WO 00/37387 A from Int'l Srch Rprt), Dargaud et al. '288 B1 or '001 B2, GB 2385325 (Simon James-on PTO-1449), Brannon et al. '305 B1, Chatterji '492 B2, or Reddy '206 A1 in view of Volpert '091 B2, Villar et al. '562, or Birchall '748.

The primary references were discussed above. However, not all teach trimodal particle packing. The secondary references teach that trimodal or multimodal particle packing is an advantageous and obvious design choice for one of ordinary skill in the art and would improve well cements including applications such as wells/subterranean formations.

35 USC 112 Second Paragraph:

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as failing to set forth the subject matter which applicant(s) regard as their invention.

Independent claims 1 is indefinite because applicants do not define the fine, medium, and coarse particle sizes of their trimodal particle packing scheme. Inclusion of claim 2 into claim 1 (and thus canceling claim 2) would resolve this issue.

This rejection will remain until claim 2 limitations are put into claim 1. Applicants cannot read limitations of claim 2 into claim 1 to rectify this either.

Response:

The applicants canceled claim 4 and inserted the limitation that the PVF (packing volume fraction) for their claimed cement composition is at least 0.78. The applicants state the prior art does not teach this PVF value or above. In rebuttal, this PVF is inherent to the composition of the references cited in the 102 rejection because they all contain the same components in overlapping particle size ranges (also note that applicants certainly cannot argue particle size range for claim 1 because there is no particle size ranges defined for coarse, medium, and fine particles, and cement. Applicants cannot argue the limitations of the specification or a dependent claim (such as claim 2) into independent claim 1 and claim 1 thus stands on its own and is given its broadest interpretation.

Nevertheless, even if not inherent, Villar '562 provides the motivation to increase packing volume fraction or PVF. Villar teaches that PVF can be optimized up to value greater than 0.80, preferably, greater than 0.85, and more preferably greater than 0.90 (col.3, lines 50-57). The primary references also discuss optimizing maximum PVF and with the teaching of Villar one of ordinary skill in the art would have the capability of achieving applicants' claimed PVF range. Thus, based on Villar and the primary references and contrary to applicants assertion that there is no motivation, the examiner respectfully disagrees on that point.

The examiner has fully addressed applicants' arguments and finality is now proper.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is 571-272-1373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Marcantoni/
Primary Examiner, Art Unit 1793